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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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In the Matter of)
)
Amendment of the Commission's) Gen. Docket No. 90-314,
Rules to Establish New)
Personal Communications) ET Docket No. 92-100
Communications)

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To: The Commission

COMMENTS
OF
NATIONAL ASSOCIATION OF BUSINESS
AND EDUCATIONAL RADIO, INC.

The National Association of Business and Educational Radio, Inc. ("NABER"), pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. Section 1.415, hereby respectfully submits its Comments in response to the Notice of Proposed Rule Making ("Notice") adopted by the Federal Communications Commission in the above-captioned proceeding.¹

I. BACKGROUND

NABER is a national, non-profit, trade association headquartered in Alexandria, Virginia, that represents the interests of large and small businesses that use land mobile radio communications as an important adjunct to the operation of their businesses and that hold thousands of licenses in the private land mobile radio services. NABER has five membership sections representing Users, Private Carrier Paging licensees, Radio Dealers, Technicians and Specialized Mobile Radio

¹ Notice of Proposed Rule Making, (FCC 92-333), Gen. Doc. No. 90-314, 57 FR 40630 (September 4, 1992).

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operators. NABER's membership comprises over 6,000 of these businesses and service providers holding thousands of licenses in the private land mobile services.

In the Notice adopted July 16, 1992, the Commission proposed service rules to establish a Personal Communications Service ("PCS").^{2 3} The proceeding to consider establishment of PCS was originally initiated by a Notice of Inquiry adopted June 14, 1990, and was based on two petitions for rule making filed in 1989 seeking an allocation of spectrum for the implementation of new personal communications services. The Commission also received ten petitions for rule making seeking use of the 930-931 MHz Advanced Paging Reserve for a variety of new applications, primarily advanced paging and messaging services. A separate rule making was initiated by the Commission to consider allocation of spectrum for these services (ET Docket No. 92-100). Because of the similarity in the type of services to be provided, the Commission considered the advanced paging and messaging services a part of the PCS family and consolidated the General Docket No. 90-314 and ET Docket No. 92-100 proceedings. In this Notice, the

² In association with this rule making proceeding, the Commission reallocated a portion of the 1850 to 2200 MHz band to meet the spectrum requirements for innovative new spectrum technologies such as the personal communications services. Report and Order and Third Notice of Proposed Rule Making (FCC 92-437), ET Doc No. 92-9, 57 FR 49020 (October 29, 1992).

³ The Commission proposes a definition of PCS as "a family of mobile or portable radio communications services which could provide services to individuals and businesses, and be integrated with a variety of competing networks."

Commission proposes to allocate spectrum in the 900 MHz band for advanced paging and messaging services and seeks comments on the regulatory structure of these new services designated as PCS.

II. COMMENTS

The Notice addresses a number of regulatory issues necessary to establish PCS. These comments primarily focus on (1) the regulation of PCS providers as either private carriers and/or common carriers and (2) the regulation of the proposed advanced paging messaging services in the 900 MHz band.

A. Regulation as Private Carrier/Common Carrier

The proposed Section 99.13 language defining the eligibility to hold a license in the PCS only excludes from eligibility foreign governments and agents of foreign governments. NABER concurs with the eligibility requirements proposed by the Commission and urges the Commission to regulate PCS providers as private carriers, or alternatively allow the licensee to choose whether to operate the system as a private carrier or a common carrier.

The Commission is concerned that provision of PCS not be delayed by regulatory hurdles or be imperiled by a lack of consumer interest because of high costs and unreasonable rates. To permit PCS to become a viable, attractive service to the consumer and to encourage the development of PCS, the Commission must provide PCS licensees the utmost flexibility

in constructing and operating these systems and reduce the regulatory burdens imposed by federal as well as state and local regulators on the licensee.

NABER therefore encourages the Commission to regulate PCS licensees in the same manner as the private carriers as a means to reduce the regulatory burdens on licensees and permit the greater flexibility in service offerings by the PCS provider. Treatment of PCS providers as a private carrier would reduce the regulatory burdens on the PCS providers because the Communications Act exempts the private carrier service provider from local and state entry and rate regulations.⁴

As the Commission recognized in the Notice, the distinction between regulation of the common carrier and the private carrier rests on the resale of interconnect services for profit.⁵ The private carrier licensee is prohibited from reselling interconnect service on a for-profit basis whereas the common carrier may resell the interconnect service for profit. As long as PCS providers are assured of access to the public switch telephone network (PSTN) for interconnect, on the same basis and regardless of the licensee's designation as a common carrier or private carrier, the prohibition from reselling interconnection on a for-profit basis should not impede the development of PCS.

⁴ See 47 U.S.C. § 132(d).

⁵ See 47 U.S.C. § 132(c).

However, should PCS providers want or need to resell interconnect service for profit to make the system or business viable, then the Commission, under the Communications Act, must treat these providers as common carriers. In such event, NABER recommends that the Commission permit the PCS providers a choice as whether the system will be operated on a private carrier or a common carrier basis.

B. Interconnection

The Commission seeks comments on the regulation of interconnect services to the PCS provider. NABER supports the Commission's proposal to explicitly confirm that PCS licensees have a federally protected right to interconnection with the PSTN whether PCS be classified as a private or common carrier service. NABER agrees with the Commission's determination that PCS providers should be able to obtain a type of interconnection that is reasonable for the particular PCS system and on no less favorable terms as offered by Local Exchange Carriers ("LEC") to any other customer or carrier. Further, NABER concurs with the Commission's assessment that state and local regulation of kinds of interconnect to be provided to PCS should be preempted. Finally, NABER does not oppose the Commission's proposal to permit state and local regulation of interconnect rates provided such rates do not discriminate between private carrier and common carrier providers and provided that the Commission will revisit its

decision should such regulation of rates impair the development of PCS.

C. Advanced Messaging and Paging in the 900 MHz Band

In the Notice, the Commission proposes to allocate three megahertz of spectrum for a variety of narrowband PCS services such as advanced paging, messaging, data, and CT-2. The Commission proposes to allocate three one-megahertz bands of 900 MHz spectrum for these purposes: 901-902 MHz, 930-931 MHz and 940-941 MHz. These bands are currently reserved for advanced paging and general purpose mobile services. Unlike the Commission's reallocation of a portion of the 2 GHz band for PCS, there are no incumbent users licensed to operate in this 900 MHz spectrum.

The Commission received ten separate petitions for rule making that requested using the 930-931 MHz advanced paging reserve for a variety of new applications, principally advanced paging and messaging services. A separate rule making (ET Docket No. 92-100) was initiated to consider these petitions; however, the Commission consolidated the ET Docket No. 92-100 proceeding with the General Docket No. 92-314 proceeding. Advanced paging and messaging services may utilize similar technologies and have a similar underlying function (i.e., provision of telecommunications to individuals on the move) as services proposed as personal communications services, and may well be considered within the family of personal communications services. Nevertheless, combining

these two proceedings, when the implementation of PCS in the 2 GHz band may be delayed due to the opposition of incumbent licensees of the 2 GHz band, is not in the public interest.

A continued association of these two dockets could delay the implementation of the advanced paging and messaging services, and may impede the future development of these services. The opponents of the PCS allocation in the 2 GHz band have been fairly successful in delaying the Commission's action in General Docket No. 90-314. NABER foresees further delay in the Commission's implementation of PCS in the 2 GHz band. Accordingly, NABER discerns no public benefit in the continued affiliation of these two proceedings. NABER urges the Commission to separate the ET Docket No. 92-100 from General Docket No. 90-314, and take expeditious action to implement the advanced paging and messaging services in the 900 MHz band.

1. Allocation of Spectrum for Advanced
Paging and Messaging

NABER reiterates its opposition to the Commission allocating any spectrum for CT-2 services, and opposes allocation of the three megahertz of spectrum in the 900 MHz band for implementation of CT-2 service. CT-2, as defined in the Notice,⁶ stands for a "cordless telephone, second generation." This device can be used as a cordless telephone at home and in an office, and as a portable pay phone to

⁶ Notice at fn. 16.

initiate calls when in range of a CT-2 microcell. NABER perceives CT-2 service similar to a traditional telephone service, and remains unconvinced that CT-2 is an advanced or "emerging" technology. NABER urges the Commission to eliminate CT-2 service as a technology that may be placed in operation in the proposed 900 MHz band allocation.

NABER instead recommends that the three megahertz of 900 MHz spectrum be allocated for digital data or voice transmissions, such as paging and messaging. Advanced paging and messaging should be defined generically, but no analog one-way or two-way voice communications should be permitted in these bands, such as used by CT-2. Further, NABER suggests that the 901-902 MHz band be allocated for low power transmissions and that the 930-931 MHz and 940-941 MHz bands be allocated for high power transmissions. These proposed allocations reflect the type of transmissions permitted in the adjacent band allocations for paging.

2. Assignment Procedures

The licensing of the three megahertz of virgin spectrum most likely will generate a number of applications being filed by individuals without interest, experience, or capital to construct and operate the proposed systems. The Commission has only two mechanisms statutorily available for selecting among mutually exclusive applications: comparative hearings and lotteries. Comparative hearings are administratively burdensome and time consuming. NABER does

not consider the use of comparative hearings as a viable method to select licensees to operate advanced paging and messaging systems. Instead, NABER recommends the Commission adopt a "first-come, first serve" application approach and utilize lotteries should there be mutually-exclusive applications filed, but only if the Commission adopts strict licensing procedures and construction rules to deter speculation.

NABER concurs with the Commission's proposal to impose a higher filing fee (based on the number of transmitter sites) for each application. Further, NABER suggests the Commission either require a firm financial showing to be filed prior to processing of an application or require a licensee to post a performance bond to guarantee timely construction and operation of the authorized system. Should the licensee fail to construct the system as proposed, the licensee would forfeit the bond to the Commission, or the U.S. Treasury. Finally, NABER urges the Commission to impose strict construction and operational standards and firm benchmarks imposed as conditions for retaining a PCS authorization for the duration of the license term. In this manner, the Commission should eliminate a large portion of the speculators, but at the same time ensure that legitimate small businesses are able to compete for these licenses.

III. CONCLUSION

WHEREFORE, the National Association of Business and Educational Radio, Inc. respectfully requests that the Commission act in accordance with the views expressed herein.

Respectfully submitted,

National Association of Business
and Educational Radio, Inc.

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